

E-filing

AO 91 (Rev. 08/09) Criminal Complaint

## UNITED STATES DISTRICT COURT

for the  
Northern District of California

United States of America )

v. )

JOSE ANTONIO GUITERREZ, a/k/a JOSE FOGEL, )  
a/k/a JOSE FOGAL, a/k/a )  
JOSE GUITERREZ-FOGAL, )

Case No.

4-12-70377

Defendant(s)

FILED  
APR - 3 2012  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

MAG

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of April 2, 2012 in the county of Alameda in the  
Northen District of California, the defendant(s) violated:Code Section  
18 U.S.C. §111(a)(1)Offense Description  
Forcible Assault of a Federal AgentPenalties:  
8 years in custody  
\$250,000 fine  
3 years of supervised release  
\$100 special assessment

This criminal complaint is based on these facts:

See attached Affidavit of U.S. Deputy Marshal David Siegel.

☒ Continued on the attached sheet.

APPROVED AS TO FORM:

Christina McCall  
CHRISTINA McCALL, AUSA


Complainant's signature

DAVID SIEGEL, U.S. Deputy Marshal  
Printed name and title

Sworn to before me and signed in my presence.

Date:

4/3/12



Judge's signature

City and state: Oakland, CaliforniaDONNA M. RYU, United States Magistrate Judge  
Printed name and title

Affidavit of Deputy U.S. Marshal David Siegel

I am a Deputy in the United States Marshals Service and have been so employed for approximately three and a half years. My previous law enforcement experience since 2001 includes service in the United States Marine Corps' Military Police and service as a United States Customs and Border Protection officer.

As a Deputy in the United States Marshals Service (USMS), I am currently stationed with the Northern District of California Oakland office and empowered to investigate and make arrests for violations of Title 18 United States Code section 111, forcibly assaulting federal officers or employees. This affidavit is submitted for the limited purpose of providing probable cause to support the attached criminal complaint. I have not set forth each and every fact learned during the course of this investigation in the above affidavit but have only included the details I believe are necessary for probable cause.

Through my personal observations, my review of records and reports, review of a publically-available videotape of the assault, and interviews with other USMS Deputies, I have learned the following information.

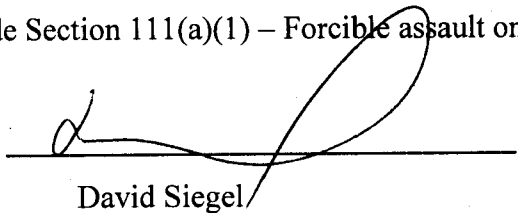
- A. On April 2, 2012, at approximately 12:20 p.m., the Drug Enforcement Agency (DEA) phoned and requested that USMS Deputies assist DEA and Internal Revenue Service Criminal Investigations (IRS-CI) agents who were trapped inside a marijuana dispensary by protesters at 789 17<sup>th</sup> Street, Oakland, CA 94612, as they attempted to execute a federal search warrant.
- B. Prior to the request for assistance at the 17<sup>th</sup> Street address, USMS Deputies assisted DEA and IRS-CI in the execution of another search warrant at a location a few blocks away at 1600 Broadway. I was present at both locations. The crowd in both locations was aggressive, crowding toward the agents and operations. Some loud members of the crowd called us terrorists, shouted that we were committing war crimes, used obscenities toward us, and personally insulted us, in addition to blowing marijuana smoke directly in our faces. At the Broadway address, some of the members of the crowd said they would post photographs

of the law enforcement officers on the internet, and send them to "Anonymous," and find out who our family members are.

- C. USMS Deputies arrived at the 17<sup>th</sup> Street address as a team at approximately 12:35 p.m., dressed in distinctive law enforcement attire, and provided security at the entrance of the address. Shattered glass from several storefront windows was observed on the sidewalk in front of the dispensary. Several unidentified protesters attempted to initiate bodily contact with the Deputies. Other unidentified protesters began yelling in the faces of the Deputies from approximately 12 inches away. The protesters' actions had caused several of the Deputies to receive saliva on their faces and uniforms.
- D. Deputy U.S. Marshal Shakeri was performing his official duties, wearing: khaki-colored pants; a dark blue baseball style cap with a large image of the USMS logo on the front; a dark blue jacket clearly marked with a gold USMS logo on the chest front and the words "US MARSHAL" printed under the logo, large "US MARSHAL" letters in gold on both arms, and large gold letters saying "US MARSHAL" on the back of the jacket; and a duty belt, including his service weapon.
- E. Just outside the entrance to the 17<sup>th</sup> Street address, prior to 1:00 p.m., Subject, later identified as Jose Antonio Guterrez, separated from the crowd, lunged toward USMS Deputies and assaulted Deputy US Marshal Shakeri by shoving him with both hands while Deputy Shakeri's back was turned. Deputy US Marshal Shakeri staggered forward due to the significant force of the shove by Guterrez, but avoided falling to the ground initially due to the proximity of other agents and the crowd. Fearing additional physical attacks on law enforcement, Supervising Deputy US Marshal McCloud and other Deputies attempted to arrest Guterrez for assault on a federal officer, and fell to the ground with Guterrez. During the struggle to arrest Guterrez, he continued to resist verbally and physically. Guterrez attempted to punch and kick arresting USMS Deputies, until finally subdued in hand cuffs. As a result of attempting to arrest Guterrez, and Guterrez's kicking and punching, Deputy Shakeri suffered an abrasion to his knee, and Deputy McCloud sustained abrasions to his elbow and knee, and causing an injury to his right knee, causing Deputy McCloud to limp.

- F. Deputy US Marshal Lopez witnessed Guterrez, who was dressed in a grey hooded sweat shirt wearing a pig mask, participate as a hostile crowd member, and shove Deputy US Marshal Shakeri into Deputy Lopez. Prior to shoving Deputy Shakeri, Deputy Lopez witnessed Guterrez kick another agent, believed to be a DEA agent. The investigation into the kicking of an agent continues. Guterrez had possession of the pig mask when he was arrested; the mask is currently kept in USMS custody. Deputy US Marshal Lopez incurred abrasions on her right knee as a result of attempting to arrest Guterrez, and Guterrez's continued resistance.
- G. News footage on Channel 2 KTVU news video clip dated 04/02/2012, "Raw video: Feds clash with Oakland pot club supporters," also shown at:  
<http://www.ktvu.com/videos/news/oakland-federal-agents-raid-local-pot-clubs/vGk7K/>  
clearly showed Guterrez, dressed in his grey sweat shirt, place both of his hands on Deputy US Marshal Shakeri as he turned his back, then shove him with brute force in one swift motion.
- H. Deputy US Marshal McCloud also witnessed Guterrez use enough force to push Deputy US Marshal Shakeri and cause him to fall forward. Deputy US Marshal McCloud stated that Jose Guterrez also attempted to punch and kick Deputies, and resist arrest.

For the reasons set forth above, I respectfully submit that there is probable cause to believe that Jose Antonio Guterrez violated Title 18 United States Code Section 111(a)(1) – Forcible assault on a federal agent.

  
David Siegel  
Deputy U.S. Marshal

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 3rd DAY OF APRIL 2012.

  
HON. DONNA M. RYU  
United States Magistrate Judge